IN THE

Supreme Court of the United States

No. 795

JESSE C. ADKINS, *et al.*, Constituting the Minimum Wage Board of the District of Columbia, *Appellants,*

v.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, A Corporation, *Appellee.*

No. 796

JESSE C. ADKINS, *et al.*, Constituting the Minimum Wage Board of the District of Columbia, *Appellants,*

v.

WILLIE A. LYONS, *Appellee.*

SUPPLEMENTAL BRIEF OF AMICI CURIAE

HERMAN L. EKERN,
Attorney General of the State of Wisconsin,
J. E. MESSERSCHMIDT,
Assistant Attorney General,
FRED M. WILCOX,
Chairman, Industrial Commission of Wisconsin,
AMICI CURIAE.

In view of the importance of the question involved and the far-reaching results that may follow an adverse decision, which may directly affect the constitutionality of the Minimum Wage Law of Wisconsin, we respectfully submit to this court the following observations concerning some of the legal questions involved:

Minimum wage laws enacted by a number of states have been sustained as a valid enactment, and constitutional, by all the supreme courts of the states that have considered the question, and the only adverse decision is the one from the supreme court of the District of Columbia, from which this appeal is taken. We believe that the position taken by the supreme court of the District of Columbia is fundamentally unsound, and we will briefly state our reasons:

It is held that the Minimum Wage Law in question is violative of that part of the Fourteenth Amendment to the United States Constitution, which reads:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Sec. 1, Art. XIV.)

It is argued that the right of Willie A. Lyons to contract her labor in any lawful calling is a property right of which, if the property right means anything, she cannot be deprived; that the constitution protects the freedom of contract

and the right to contract with relation to one's business; that congress may have power to require safeguards in conducting dangerous occupations that affect the mode of operation, but cannot provide how much the employer shall pay the employe for his services; that this is a purely economic question; that it deprives the owner of the property of the economic control thereof. It is also contended that

> "Legislation tending to fix the prices at which private property shall be sold, whether it be a commodity or labor, places a limitation upon the distribution of wealth, and is aimed at the correction of the inequalities of fortune which are inevitable under our form of government, due to personal liberty and the private ownership of property. These principles are embodied in the Constitution itself, and to interfere with their freedom of operation is to deprive the citizen of his constitutional rights."

It is further said:

> "The police power cannot be employed to level inequalities of fortune. Private property cannot by mere legislative or judicial fiat be taken from one person and delivered to another, which is the logical result of price fixing."

It is also argued that the business under consideration is a private business conducted between private individuals in which the public has no direct economic interest.

As we understand the position of the lower court, its argument is that when an employe is willing to work for a smaller wage than is necessary to sustain her in good health, such employe has a right to contract with an employer on that basis, and that this act deprives both parties of this right and interferes with their liberty to contract in violation of the constitutional provision. In other words, it is contended that congress has no power to fix wages for women and minors, even if it be absolutely necessary to do so in order that the health and morals of the employe may be preserved.

Contract by Minors and Women

When we consider the fact that minors and married women have not been permitted to make any contracts from time immemorial disposing of their labor, in any way, it is difficult to understand how a statute which limits such contract only in one respects hould be unconstitutional. The right to contract by married women has not been given to them by constitutional amendment, but by the enactment of statute laws. They had no such right at the time when the constitution was adopted, and some minors have no such right at the present time.

The Usury Laws

That the position taken by the lower court is fundamentally wrong is capable of clear demonstration in a concrete way when we consider the provisions of usury laws. We will, for the purpose of illustration, take the Wisconsin law on the subject of usury. Sec. 1689 of the Wis. Stats. provides:

"No person, company or corporation shall di-

> "No person, company or corporation shall directly or indirectly take or receive in money, goods or things in action, or in any other way, any greater sum or any greater value for the loan or forbearance of money, goods or things in action than at the rate of ten dollars upon one hundred dollars for one year; * * *."

In sec. 1691 of the Wisconsin Statutes, a penalty is provided of fine or imprisonment, or both, for a violation of this statute. There is also a provision against the charging of compound interest. This is generally not considered a part of the usury law. The legal rate of interest in Wisconsin is six per cent. The market rate fluctuates from five to seven per cent.

Usury statutes have been held constitutional on the ground that the provisions of the constitution of the United States prohibiting states from impairing the obligation of contracts applies only to contrracts lawfully made, not such

as are illegal and contrary to public policy, and that usury acts are intended to protect the necessitous from the oppression of unscrupulous persons.

39 Cyc. 910.

Every argument advanced by the decision in the trial court against the legality of the Minimum Wage Law here in question is equally applicable to the usury law. That the principle embodied in the usury law is fundamental and a part of our government is apparent when we consider that the same principle is found embodied in the laws of all peoples, both ancient and modern. We find usury laws in China, in India, among the Athenians, as part of the Roman law, the civil law, the common law, and they have been embodied in the statutes of every state in the union from an early day. Even in the days of Moses, they were already found necessary. In Deuteronomy 23:19, we find the provision:

> "Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury."

Under this constitutional law, if A goes to his neighbor B to borrow one hundred dollars and is willing to pay B twelve per cent interest and his neighbor B is willing to loan him the money at twelve per cent, they are, nevertheless, prohibited from making this contract, under

a valid usury law, notwithstanding the provision of the constitution of the United States protecting its citizens in their property rights and in the right of making contracts relative thereto.

Here is a private transaction between two citizens limited by law as to the price to be fixed for a commodity—the use of money. It places a limitation upon the distribution of wealth if the fixing of a minimum wage has that effect.

The usury law was not passed to meet a passing trouble or an existing emergency. It is a law that applies under all conditions, in all ages, in all parts of the United States. If the right to contract as to the price of labor is a property right, then, certainly, the right to contract as to the price of the use of money is also a property right. If a law fixing a minimum wage takes the economic control of a man's property, so does the usury law. The one takes away the personal liberty to contract in regard to one's property no less than the other.

Upon what principle has the usury law been sustained? It has been sustained on the elementary principle of government that it is a function of the government to protect the weak against the strong. It is the duty of the government to protect the weak not only against those physically strong, but also against those economically strong.

Chief Justice Dixon, in an early Wisconsin case

McArthur v. Schenck, 31 Wis. 673, at p. 676, said:

> "The theory upon which laws against usury have been enacted, and the principle which has governed in their interpretation, have always been, that the borrower was at the mercy of the lender and subject to his utmost exactions and avarcious demands, unless protected by laws. * * * It is to shield from the grasp of the lender, and save the borrower from the injurious consequences of his own weakness and inability, that such statutes have been passed. They are designed for the protection of the borrower, and the protection so given has been extended to those persons standing in his place or representing him and succeeding to his rights, such as heirs-at-law, executors, devisees, sureties, assignees and the like."

The court will note that the usury law places a limit beyond which the law does not permit the parties to contract. The economic laws of supply and demand as to the rate of interest is still operating, and is not greatly, although it may be slightly, affected by the usury law.

The Minimum Wage Law is enacted on the same fundamental principle. It is to meet certain oppressive conditions. It puts a limit, the same as the usury law, as to the minimum amount that may be paid for wages. It is not as universal as the usury law. It applies only to women and minors. In the economic struggle between employer and employes which, under

present complicated conditions is more intense than it ever has been, is it any wonder that among women and minors there would be some that would find it impossible to secure contracts for the sale of their labor sufficient to meet the cost of living?

It is common knowledge of which courts may take judicial notice, that women do not receive the same wages for doing equal work as men do. And when they are forced through enconomic conditions to sell their labor for less than the cost of living, a condition arises which makes it necessary for the government to place an economic limit on the wage of those affected. It is for the government to stop the exploitation of those who are unable to protect themselves. This does not take away the liberty to contract because that is already taken away by the oppressive conditions under which they are compelled to work. It is rather to restore the employes to an equality with the employers that this law is enacted. It is to place the two parties to the contract of wages on a par, and to restrain the oppressor in making unconscionable contracts as to wages, the same as the usury law restrains the oppressor in making unconscionable contracts as to the rate of interest.

It strikes at the lowest scale of wages and leaves those receiving a fair compensation to the laws of competition. The court will note that the Wisconsin minimum wage fixed by the Industrial Commission was below the market price for

wages, and that the law of supply and demand can still operate in determining the market price of wages. The Minimum Wage Law has had the effect of raising the lower end of the wage scale to the level of the cost of living. Indirectly, especially in some businesses, it may have affected the price of labor the same as the usury law may indirectly affect the rate of interest.

That the women and minors are in a class separate from men is universally acknowledged. The War Labor Conference Board, under date of March 29, 1918, said, in its official report:

> "If it shall become necessary to employ women on work ordinarily performed by men, they must be allowed equal pay for equal work and must not be allotted tasks disproportionate to their strength."

This court has recognized this in

> *Muller v. Oregon*, 208 U. S. 412;
> *Miller v. Wilson*, 236 U. S. 373.

The government is vitally interested. There is a public interest in the result of the oppression of the law of supply and demand as to wages, when it forces some of the employes to accept wages that fall below the line of subsistence. There is an unmistakable indication that such employe is not strong enough to meet the economic conditions under which he labors, and needs the strong arm of the law for protection, not only for himself but for the benefit of all.

This same fundamental, general principle was applied in the case of *German Alliance Insurance Co. v. Kansas,* 233 U. S. 389, and in *Block v. Hirsh,* 256 U. S. 135. In both instances, the facts there which justify the law showed that the weak needed the protection of the government in their business transactions.

Principle of Constitutional Construction Here Applicable

It is argued in the majority opinion in the lower court that the United States Constitution is not flexible and that we are meeting here a principle that is immutable and not elastic or subject to change. The rules of construction that are applicable to our constitution have been phrased in various ways, both by judges of this court, and by judges of other courts. Among those, I find just one which states the principle so succinctly that I desire to quote it. The late Chief Justice John B. Winslow of the supreme court, in *Borgnis v. Falk Co.,* 147 Wis. 327, said, on pp. 349-350:

> "Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed, and implicitly obeyed, so long as they remain unamended or unrepealed. Any other course on the part of either legislator or judge constitutes violation of his oath of office. But when there is no such express command or prohibition,

but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standards is this general language or general policy to be interpreted and applied to present-day people and conditions?

"When an eighteenth century constitution forms the charter of liberty of a twentieth century government must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

"Where there is no express command or prohibition, but only general language or policy to be considered, the conditions prevailing at the time of its adoption must have their due weight; but the changed social, economic, and governmental conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter nto the consideration, and become influential factors in the settlement of problems of construction and interpretation."

There is no provision in the constitution which expressly prohibits congress or the legislature from enacting a minimum wage law. We have only general provisions that are here applicable. In interpreting the meaning that is to be placed upon these provisions, the present economic condition, the ideals of the people, and the oppressive conditions that need amelioration must

necessarily be taken into consideration; and the constitution must be given a construction that will be consistent with the life of the republic, that will not hamper its growth nor paralyze the people in their yower to aid the oppressed and enjoin the oppressor. And I quote here, as apropos, the words of A. R. Denu, of Rapids City, South Dakota, who said:

> "And so with new responsibilities before us, with the undreamed of emergencies of the future to face, the courts of our country will never permit the free hand of the people to be paralyzed by the quibblers over words. But imbued with the spirit of the immortal Marshall, will see in this document a source of life; and as this nation grows from a tender tree into a giant-oak, the constitution, unlike an iran band that strangles, but as the bark which protects, will grow and expand as the vital body within develops towards maturity."

The majority opinion is apprehensive that this law is the initial step towards unlimited wage-fixing; that it is the beginning of the socializing of the wealth of the country. In our view, the result is just the opposite. Let us eliminate the hardships as they occur in our economic strifes by reasonable and progressive legislation. This will perpetuate our institutions instead of endangering their existence. It will put our econnomic competition on higher planes and will make our social systems more endearing to the

people. While, if we fail to give adequate remedy to real oppressive conditions, the people will turn to other economic systems for remedies.

We respectfully submit that the Minimum Wage Law is founded upon fundamental principles of government, and that the lower court should be reversed, and the law sustained as constitutional.

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District of Columbia Minimum Wage Cases

Supreme Court of the United States

OCTOBER TERM, 1922.

No. 795 AND No. 796.

JESSIE C. ADKINS, *et al.*, CONSTITUTING THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, A CORPORATION.

JESSIE C. ATKINS, *et al.*, CONSTITUTING THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

WILLIE A. LYONS.

BRIEF ON BEHALF OF MINIMUM WAGE COMMITTEE, STATE OF WASHINGTON

EDWARD CLIFFORD,
Chairman,
KENNETH DURHAM,
Attorney.
AMICI CURIAE.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1922

Nos. 795 and 796

JESSE C. ADKINS, *et al.*, constituting the Minimum Wage Board of the District of Columbia,
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vs.
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JESSE C. ADKINS, *et al.*, constituting the Minimum Wage Board of the District of Columbia,
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vs.
WILLIE A. LYONS.

The following memorandum is submitted by the minimum wage committee of the state of Washington for the reason that the above cases in which the constitutionality of the minimum wage law of the District of Columbia is attacked are pertinent to the minimum wage statute of the state of Washington which corresponds in substance with the law before the court.

In common with twelve other states of the union and with Great Britain, France, Austria, Norway and a number of the provinces of Canada, the state of Washington has long provided by statute for a minimum wage for women with the declared purpose of safeguarding their

morals and health for the benefit of the commonwealth and its future generations. The minimum wage statute of the state of Washington, Laws of 1913, Chapter 3, (Rem. Code Sections 6571-1, et seq.) first declares the police power of the state and the necessity for its exercise:

> 6571-1. "The welfare of the state of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect."
>
> 6571-2. "It shall be unlawful to employ women or minors in any industry or occupation within the state of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the state of Washington at wages which are not adequate for their maintenance."

Section 6571-3 creates a commission to be known as the Industrial Welfare Commission (now called Industrial Welfare Committee—Sec. 10840) and empowers it to establish conditions of labor and to fix reasonable standards of wages which shall be sufficient to maintain women employees in health and morals. The other sections of the act empower the commission to investigate wages and conditions and through the instrumentality of an advisory conference to establish by an obligatory order standard conditions of labor and a minimum wage for women.

The constitutionality of the Washington statute was attacked in the case of *Larsen* v. *Rice*, 100 Wash. 642, the appellant arguing that the statute under which the Indus-

trial Welfare Commission acted was unconstitutional because it violated No. 3, Art. 1, of the constitution of the state of Washington and Art. 1 of the fourteenth amendment to the constitution of the United States, which provides "nor shall any state deprive any person of life, liberty or property without due process of law". The constitutionality of the act was upheld. Quoting:

> "The state of Oregon has a law upon its statute books almost the exact counterpart of our own, and its constitutionality was sustained by the unanimous decision of the highest court of that state sitting En Banc, against attacks based upon the several grounds urged by the appellants here. *Stettler* v. *O'Hara*, 69 Ore. 519, 139 Pac. 743; *Simpson* v. *O'Hara*, 70 Ore. 261, 141 Pac. 158. These cases were taken, by writ of error on the Federal question involved, to the United States supreme court, and were there affirmed after a reargument, although by an equally divided court, Mr. Justice Brandeis taking no part in the consideration and decision of the cases. *Stettler* v. *O'Hara* and *Simpson* v. *O'Hara*, 243 U. S. 629. The reasoning of the justice of the Oregon court writing the decisions in the cases appeals to us as sound and conclusive, and we are content to rest our judgment on the authority of the cases as there determined."

This decision was affirmed in the later case of *Spokane Hotel Co.* v. *Younger*, 113 Wash. 359.

Minimum wage statutes have been held constitutional by the courts of Arkansas (*State* v. *Crow*, 130 Ark. 272); Minnesota (*Williams* v. *Evans*, 139 Minn. 32); Massachusetts (*Holcomb* v. *Kreamer*, 231 Mass. 99); Oregon (*Stettler* v. *O'Hara*, 69 Ore. 592, *Simpson* v. *O'Hara*, 70 Ore. 261); Texas (*Poye* v. *State*, 230 S. W. 162); and Washington (*Larsen* v. *Rice, supra*, and *Spokane Hotel*

Co. v. *Younger, supra*). No court, with the exception of the Court of Appeals of the District of Columbia in the instant case, has held to the contrary.

The rules of law applicable to this case are few and well established. The right to contract one's labor and the right to employ labor are both within the liberty protected by the fourteenth amendment to the constitution of the United States. This right is nevertheless subject to such reasonable restraint as the state may impose in the exercise of the police power for the protection of health, safety, morals and the general welfare. *Muller* v. *Oregon*, 208 U. S. 421. The minimum wage statute of the District of Columbia and with it the statutes of Washington and the other states having similar laws must be sustained as constitutional unless the court can find that there is no fair ground, reasonable in and of itself, to say that there is material danger to the health and morals of women employees if a minimum wage is not established. *Lochner* v. *New York*, 198 U. S. 45. Upon this question the judgment of the legislatures of the many states which have enacted such statutes, the experience of foreign countries which have found them necessary and the decisions of the courts of the states which have without exception upheld the minimum wage are worthy of most serious consideration. *Halter* v. *Nebraska*, 205 U. S. 34.

A minimum wage for women may be established, although such a law for men might be held unconstitutional, because of the inherent differences in the physical structure of the sexes and the interest of the state in safeguarding women. Healthy mothers are essential to vigorous offspring, and the entire hope of the commonwealth rests upon the maintenance of a high standard of maternity. *Muller* v. *Oregon*, 208 U. S. 412.

It is argued by the majority opinion of the Court of Appeals of the District of Columbia in the decision below: "The standard of morals is no higher among the prosperous than among the poor." This is a pleasant generality which can have no application to the dire conditions these statutes are designed to prevent. That extreme poverty is one of the promoting causes of immorality is so well established in criminology and in common knowledge as to be beyond denial. It needs no proof to sustain the assertion that a woman working for a wage insufficient to maintain her in health and decency is subjected to a temptation toward immorality sufficient to destroy the resistance of any but a strong character. The ranks of immorality are not recruited from the daughters of the prosperous.

With modern industrial conditions women have been thrown into industry in numbers so great that it has become a matter of concern affecting the existence and life of the nation. The old protection of competition which guaranteed in previous decades that the wage would not fall below the minimum of decent subsistence is no longer operative. Large numbers of women who are not wholly dependent upon their wages for maintenance have been driven into industry to assist in the support of their families. The advent of this large element has destroyed any reasonable guarantee afforded by competition. Prior to the enacting of the minimum wage statutes in various of the states the scale of wages was unquestionably, in many instances, below the point where morals and health could be maintained. Women were forced by harsh necessity to live under conditions and in surroundings which were detrimental to their health and morals. The number of women involved was large enough that the future of the state depended upon some

measure which would insure a living wage. No effort was made to level equalities of fortune—no wage was contemplated which would do anything more than support the worker in the most frugal of decent poverty. The fact that minimum wage laws have been upon the statute books of some of the states of the union for ten years or more without being repealed is proof sufficient that the dire prediction of sovietism conjured up by the majority opinion below is a wild fancy unfounded in reason.

A minimum wage must not be conceived as an average wage or a wage which levels various degrees of ability. There still remains the same incentive to efficiency provided by the hope of a higher reward. All that these states have attempted to do is to say: "The greed of man shall not drive the wages of women below the lowest point at which they can be maintained in health and morals, for in this society has a vital interest."

The law does not deal with exceptions, it assumes no paternalistic control over the women. It is not founded in emotion but is a provision for the benefit of the state, viewing women in industry as mothers or potential mothers of future citizens and protecting them only to the extent that their protection is necessary for the preservation of their health and morals as a class. Quoting from the opinion in *Muller* v. *Oregon*, 208 U. S. 422:

> "The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit; but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for

long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her."

For these reasons the minimum wage committee of the state of Washington respectfully submits that the decision of the Court of Appeals of the District of Columbia holding the minimum wage law unconstitutional should be reversed.

Respectfully submitted,

On behalf of

Minimum Wage Committee
of the State of Washington.

EDWARD CLIFFORD,
Chairman.

KENNETH DURHAM,
Attorney.